



STATE OF MARYLAND
MARYLAND DEPARTMENT OF HEALTH (MDH)
INVITATION FOR BIDS (IFB)

PHARMACEUTICAL SERVICES
DEER'S HEAD CENTER, HOLLY CENTER, POTOMAC
CENTER, RICA-BALTIMORE, RICA-ROCKVILLE, AND
WESTERN MD. HOSPITAL CENTER

MDH/OPASS 20-18592

ISSUE DATE: MAY 14, 2020

NOTICE

A Prospective Bidder that has received this document from a source other than eMarylandMarketplaceAdvantage (eMMMA) <https://procurement.maryland.gov> should register on eMMMA. See **Section 4.2**.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO
RESPOND TO THIS SOLICITATION.**

NO BID NOTICE/VENDOR FEEDBACK FORM

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

Title: Pharmaceutical Services
Solicitation No: MDH/OPASS 20-18592

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
 - Other commitments preclude our participation at this time
 - The subject of the solicitation is not something we ordinarily provide
 - We are inexperienced in the work/commodities required
 - Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
 - The scope of work is beyond our present capacity
 - Doing business with the State is simply too complicated. (Explain in REMARKS section)
 - We cannot be competitive. (Explain in REMARKS section)
 - Time allotted for completion of the Bid is insufficient
 - Start-up time is insufficient
 - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
 - Bid requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
 - MBE or VSBE requirements (Explain in REMARKS section)
 - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
 - Payment schedule too slow
 - Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
MARYLAND DEPARTMENT OF HEALTH (MDH)
KEY INFORMATION SUMMARY SHEET

Invitation for Bids	Pharmaceutical Services – Deer’s Head Hospital Center (DHHC), Holly Center, Potomac Center, Regional Institute for Children and Adolescents (RICA)-Baltimore, RICA-Rockville (John L. Gildner), and Western Md. Hospital Center (WMHC)
Solicitation Number:	MDH/OPASS 20-18592
IFB Issue Date:	May 13, 2020
IFB Issuing Office:	Maryland Department of Health (MDH or the "Department")
Procurement Officer:	Dana Dembrow, Director of Procurement MDH Office of Procurement & Support Services 201 W. Preston Street, Room 416A
e-mail:	Mdh.solicitationquestions@maryland.gov
Office Phone:	410-767-0974
Contract Officer	Theresa B. Ammons
Email for Questions: (See Appendix 1 Definition)	Mdh.solicitationquestions@maryland.gov
Procurement Coordinator	See Appendices 3.1 – 3.6
Bids will be accepted via Email only:	Bids will be accepted via email: Theresa.ammons@maryland.gov
Pre-Bid Conference Call #:	Friday, May 22, 2020, 10:00 a.m. Local Time via conference call: 1-720-443-4317 (PIN 390514572)
Questions Due Date and Time	Thursday, June 11, 2020, no later than 4:00 p.m. Local Time
Bid Due (Closing) Date and Time:	Tuesday, June 16, 2020, 2:00 p.m. Local Time via email submission to Theresa.ammons@maryland.gov Bids must be <i>password protected</i> . Bidders are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page ii).
Public Bid Opening Date, Time and Location	Tuesday, June 16, 2020, 2:15 p.m. Local Time MD Department of Health, 201 W. Preston Street, Baltimore, MD Via Conference Call
MBE Subcontracting Goal:	0%
VSBE Subcontracting Goal:	0%
Contract Type:	Firm fixed price contract as defined in COMAR 21.06.03.02.

Contract Duration:	Five years – Zero renewal options
Primary Place of Performance:	See Appendix 3 for location of each Facility.
SBR Designation:	No
Federal Funding:	No

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1 Minimum Qualifications

1.1 Bidder Minimum Qualifications

The Bidder must document in its Bid that it satisfies the following Minimum Qualifications:

1.1.1 The Bidder shall have two (2) continuous years of experience in providing institutional (e.g. medical facility, long term nursing home or prison) pharmaceutical delivery services within the past five (5) years.

1.1.1.1 Required Documentation: As proof of meeting this requirement, the Bidder shall provide with its Bid three (3) references from the past five (5) years who can attest to the Bidder's experience in providing Pharmaceutical Services in an institutional setting.

1.1.2 The Bidder shall possess a current, valid permit from the Maryland State Board of Pharmacy.

1.1.2.1 Required Documentation: As proof of meeting this requirement, the Bidder shall provide with its Bid a copy of its valid permit issued by the Maryland State Board of Pharmacy.

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1 The Maryland Department of Health (MDH or the "Department") is issuing this Invitation for Bids (IFB) in order to procure pharmaceutical services to include dispensing and delivery of medications as well as clinical pharmacist consultations and services to six (6) MDH facilities: Deer's Head Hospital Center (DHHC); Holly Center (HC); Potomac Center (PC); the Regional Institute for Children & Adolescents (RICA) – Baltimore; the Regional Institute for Children & Adolescents (RICA) – John L. Gildner/Rockville; and the Western Maryland Hospital Center (WMHC). It is the State's intention to obtain goods and services, as specified in this IFB, from a Contract between the selected Bidder(s) and the State.
- 2.1.2 The Department intends to make up to six (6) awards for the work under this IFB. See IFB **Section 4.9 Award Basis** for more Contract award information.
- 2.1.3 A Bidder, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder(s) [the Contractor(s)] shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Background and Purpose

The purpose of this Contract is to provide pharmaceutical services to include dispensing and delivery of medications as well as clinical pharmacist consultations and services to six (6) MDH facilities as follows:

- a) Deer's Head Hospital Center (DHHC)
- b) Holly Center (HC)
- c) Potomac Center (PC)
- d) Regional Institute for Children & Adolescents (RICA) – Baltimore
- e) Regional Institute for Children & Adolescents (RICA) – John L. Gildner/Rockville
- f) Western Maryland Hospital Center (WMHC)

Facility specific information and demographics is provided in Appendices 3.1 – 3.6.

2.2.1 State Staff and Roles

In addition to the Procurement Officer, the State will provide the following staff,

- a) Facility Contract Monitor
 - 1) The State will provide a Facility Contract Monitor who will be responsible for the Contract management and monitoring at each facility. The Facility Contract Monitor for each Facility may be found in Appendix 3.

2.2.2 Other State Responsibilities

- a) The State will provide normal office working facilities, access to facilities 24/7, and equipment reasonably necessary for Contractor performance under the Contract. Any special requirements (e.g., reprographic services, computer time, key data entry) shall be identified.

- b) The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work and will provide such additional assistance and services as is specifically set forth.

2.3 Responsibilities and Tasks

2.3.1 General Requirements – The Contractor shall:

- 2.3.1.1 Perform all required services in compliance with licensure, certification, and accreditation standards, including but not limited to, licensure standards of the Maryland Department of Health Office of Health Care Quality (OHCQ), the Maryland Board of Pharmacy, National Institute for Occupational Safety and Health (NIOSH) regulations regarding hazardous drugs, and the Joint Commission as well as all applicable Maryland and federal laws and regulations governing pharmacies, pharmacists, their employees, and services.
- 2.3.1.2 Have the ability to receive, process, and reconcile orders for pharmaceuticals through a secure HL7 compliant interface with a new hospital management information system. The interface can be an existing e-prescribing system with the ability to work with the facility's current system, if applicable (i.e., Optimus EMR). Critical to this process is the transfer of information to MDH concerning what was ordered and what was filled. No costs anticipated for integrating the Bidder's existing system with the hospital's system should be included in the response to this IFB.
- 2.3.1.3 Ensure that each pharmacist that will provide any of the services required under this Contract is licensed by the Maryland Board of Pharmacy. The license must remain in effect throughout the term of this Contract and a current copy shall be provided to the Contract Monitor.
- 2.3.1.4 Notify the Facility immediately if the Maryland Board of Pharmacy advises any disciplinary action against the Contractor or a pharmacist employed by the Contractor. If the Contractor receives disciplinary action by the Maryland Board of Pharmacy, the Contractor may be terminated immediately. If an employee, subcontractor, or agent of the Contractor receives disciplinary action by the Maryland Board of Pharmacy, the employee, subcontractor, or agent of the Contractor shall be prohibited from working on this Contract.
- 2.3.1.5 Notify the Facility Contract Monitor immediately of any medication shortages or outages.

2.3.2 Services – The Contractor shall:

- 2.3.2.1 Deliver prescription medications, non-prescription medications, over-the-counter medications, as well as miscellaneous medical supplies, diabetes supplies, ostomy supplies, and other items normally supplied by pharmacies as ordered by the Facility.
- 2.3.2.2 Identify and label all hazardous drugs in accordance with regulations and standards.
- 2.3.2.3 Provide these services for each person located at the Facility. Facility specific information is provided in Appendix 3.
- 2.3.2.4 Provide all tablets, capsules, etc. and selected liquids in unit-dose packaging, such as blister cards that are perforated with the name of medication and dosage

- administration time, patient/resident/client name, expiration date, and all applicable warning labels affixed or printed on the back of each dose.
- 2.3.2.5 When it is not feasible to provide medications in unit dose form, such as those provided in bottles, tubes, jars, etc., they shall be provided in individual labeled containers with the medication name, dose, administration time, patient/resident/client name, and expiration date with all applicable warning labels affixed in sizes appropriate to expected usage and practical limitations of size. Items where unit dosing is not feasible may include creams, liquids, patches, drops and suppositories, etc. For concentrated liquid, controlled drugs, when unit dose packaging is not available via manufacturer, the Contractor shall dispense in single dose individual labeled packaging; e.g. pharmacy filled single dose oral syringes.
- 2.3.2.6 Use generic drugs whenever feasible. The Contractor shall furnish the lowest-priced available brand in accordance with the Interchangeable Drug Costs formulary established by MDH http://www.mdmahealthchoicercx.com/healthchoice_docs/mmmh_form.pdf. However, under certain circumstances “Brand Only” medications may be necessary for medical reasons at no additional cost. The Facility reserves the right to document justification in the form acceptable for reimbursement by the Medicare Assistance program for “Brand Only” medications.
- 2.3.2.7 Provide medications for both emergency and interim drug cabinets, the contents of which will be determined by the medical staff of the Facility. The Contractor will be advised by the Facility whenever any of these drugs are used and if the Facility or the patient/resident/client’s insurance is to be charged. Replenishment of emergency or interim stock shall be the responsibility of the Contractor and shall be performed with the next drug delivery following notification from the Facility unless a request is made by the Facility for a STAT replacement. The Contractor shall monitor and update the drug supplies in the emergency and interim drug cabinets at least quarterly to ensure that all drugs listed on the cabinet are present and acceptable for use (e.g., expiration dates are valid, drugs are appropriate strength, form and delivery dispenser, etc.). (See 2.3.2.16)
- 2.3.2.8 For patients/residents/clients having insurance, the Contractor shall bill the person’s insurance for any medications and accept that amount paid by that insurance as payment in full. Over the counter medications are not covered by insurance and shall be billed to the Facility.
- 2.3.2.9 For patients/residents/clients with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full.
- 2.3.2.10 For patients/residents/clients who do not have private insurance nor Medicaid/Medicare/Medical Assistance coverage, invoices shall be submitted to the Contractor Monitor by the 21st of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g. over the counter medications supplied by the Contractor and not billable to Medicaid/Medicare/Medical Assistance). The two must reconcile before payment is made.
- 2.3.2.11 Maintain adequate inventory to supply the medication needs of the Facility(s).

- 2.3.2.12 Bill per Bid Pricing instructions (Attachment B). All pricing shall include all costs necessary to perform all services required under this Contract, including, but not limited to, the cost of dispensing, the cost of providing delivery, in-service pharmaceutical training, attendance at committee meetings, profit, and all other services as detailed in this Contract. There will be no additional compensation for any additional services provided. It is, therefore, recommended that the Contractor fully understand and weigh the estimated amount of time and expenses required for the Contract.
- 2.3.2.13 Provide the Facility's Contract Monitor with an electronic version, and hard copy of invoices to provide an audit trail. A monthly invoice indicating what the facility owes to the Contractor will be forwarded to the Facility in addition to invoices from the Contractor's wholesalers to prove what is being charged is the actual amount the Contractor paid.
- 2.3.2.14 Provide, to the Facility Contract Monitor, a preprinted hard copy and an Electronic Medical Records (EMR) version, if applicable, of physicians' orders and medication administration record (MAR) forms for each patient/resident/client served monthly, one week prior to medication expiration. In some facilities, the physician orders are currently FAXED to the pharmacy, whereas others are electronically entered via the Electronic Health Record (refer to Appendix 3). The Maryland Department of Health is in the process of procuring a statewide EMR/Electronic Health Record (EHR) system; therefore, when this system becomes available for public use the Contractor shall be required to register with the EMR/EHR provider and use the EMR/EHR system selected by the State at no additional cost to the State. In addition, the Contractor shall provide the use of barcoding technology for inventory control and patient safety measures if/when the system is available through the EMR/EHR.
- 2.3.2.15 Have the Assigned Pharmacist verify the content of each unit dose package and each cassette before delivery to the Facility. Documentation of the Pharmacist's review shall be maintained by the Contractor and provided to the Facility Contract Monitor upon request. (See 2.3.7.2)
- 2.3.2.16 Inventory all drug storage areas at the Facility quarterly, or as necessary to maintain proper quantity levels. The Contractor shall monitor the expiration dates of drugs, proper storage of drugs, temperature, etc. The Contractor shall notify the Facility of any drugs set to expire within four (4) months of inspection date. All inspections, recommendations and subsequent corrective actions shall be documented in writing and the reports shall be forwarded to the Facility's Contract Monitor by the 15th day of the month following the inspection. In the event the Contractor does not notify the Facility of any recorded drugs set to expire, as required in these quarterly inspections, and those drugs are returned to the Contractor after their expiration date, the Contractor will fully reimburse the Facility for the cost of those specific drugs, notwithstanding their expired status, or provide equivalent replacement at no cost to the Facility.
- 2.3.2.17 The Assigned Pharmacist shall meet, or designate someone to meet, with the Facility's Contract Monitor upon request.
- 2.3.2.18 Provide eight (8) hours of pharmaceutical in-service training to the Facility's staff on topics selected by the Pharmacist and approved by the Facility's Contract Monitor at a mutually agreed upon scheduled based on the topics and content.

- Training will be at no additional cost to the State.
- 2.3.2.19 If the solicitation requires that a particular individual or personnel be assigned by the Contractor prior to work on the Contract, any substitution of personnel must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available under the law.
- 2.3.2.20 The Contractor shall provide certain medications, as requested by the Facility, in bulk to a location designated by the Facility Contract Monitor because of the inappropriateness of unit dose administration. Such medications might include, but are not limited to, Granulex, Brokosol, Sodium Chloride Tablets (1 gram), Gelfoam, etc. The Facility will provide a list of these items.
- 2.3.2.21 Intravenous solutions and intravenous additive solutions shall be supplied in the most cost-effective size available for practical dose administration, in individual patient/resident/client-based containers and prepared in accordance with current Maryland Board of Pharmacy standards governing intravenous medication preparation.
- 2.3.2.22 Controlled drugs including narcotics shall be provided separately in locked carriers.
- 2.3.2.23 Each Facility, at its discretion, may elect to purchase selected items such as vaccines, bulk topical products, antiseptics, respiratory drugs, colony stimulating factors, diabetes supplies, enemas, bladder irrigation solutions, personal hygiene products, and intravenous fluids (other than those used in the Contractor's preparation of additive solutions), from the Contractor, a State contract, or other sources and maintain their own inventory. This inventory is not the responsibility of the Contractor.
- 2.3.2.24 Each Facility reserves the right to purchase and obtain prescription drugs, non-prescription drugs, and supplies from sources other than from the Contractor at any time.
- 2.3.2.25 The Contractor shall provide a copy of the Contractor's policies and procedures manual and performance/quality improvement plan to the Contract Monitor within ten (10) days of notification of contract award.

2.3.3 Delivery of Medication

- 2.3.3.1 Medication delivery is the complete responsibility of the Contractor.
- 2.3.3.2 The Contractor shall deliver medication with exchange cassettes containing an eight (8) to fourteen (14) day unit dose supply for each patient/resident/client every eight (8) to fourteen (14) days to the Facility daily, except Sundays and approved, official State holidays. The specific delivery time will be determined by each Facility.
- 2.3.3.3 STAT and emergency medications and medical supplies that are not available within the Facility shall be provided by the Contractor within two (2) hours of notification of need on a 24 hour per day, 7 day per week basis.
- 2.3.3.4 The Contractor shall deliver all medication errors (e.g., incorrect drugs, incorrect strengths, insufficient quantity, etc.) within two (2) hours of notification of error

on a 24 hour per day, 7 days per week basis. This delivery requirement is also applicable to the replacement of lost or damaged medication if there are insufficient doses of the medication to last until the next regularly scheduled medication delivery.

- 2.3.3.5 Any medication order transmitted, faxed or phoned to the Contractor by 4:00 p.m. EST on weekdays must be delivered the same day unless the item is not in stock or the faxed/phoned order states differently. All medications ordered which are not in stock must be delivered no later than one (1) Business Day following receipt by the Contractor of a properly executed Physician's order. This delivery requirement shall apply to both prescriptions and non-prescription medications.
- 2.3.3.6 Non-urgent, maintenance medications shall be provided in the quantities requested by the Facility (7-day supply, 30-day supply). Prescriptions may be limited to a period of time allowed by the Facility's Stop-Order Schedule, but in no case shall they exceed a one-month supply. Any unused medication from a prior delivery shall be removed from the medication cart when the new supply is delivered. Any discontinued medications shall be removed from the medication cart at the time of delivery of new medication by the Contractor and a credit shall be applied for all returns.
- 2.3.3.7 Between medication deliveries, the Facility nursing personnel may remove from the medication carts any medication(s) that have become outdated or discontinued and arrange for the item(s) to be returned to the Contractor. Credit shall be applied to the Facility's monthly invoice for all returns. This shall be done in accordance with all applicable laws and regulations.
- 2.3.3.8 Delivery time requirements may be modified by the Facility's Contract Monitor or his/her designee under certain circumstances such as, but not limited to:
- A. Recognition by the Contractor of known or suspected patient/resident/client allergy to requested medication.
 - B. Recognition by the Contractor of drug-drug interactions that must be resolved with the Facility prior to delivery.
 - C. Non-availability of a product from the manufacturer. In the event of non-availability of a product, the Contractor shall recommend therapeutic alternatives, when available.

2.3.4 Assigned Pharmacists

- 2.3.4.1 Within five (5) Business Days of notification of Contract award, the Contractor shall provide notice to the Facility's Contract Monitor of the intended Assigned Pharmacist. Included with this notice shall be a copy of the current license from the Maryland Board of Pharmacy for this individual, an explanation of why this individual was selected and the expected availability of this individual to successfully perform in this capacity. The Facility Contract Monitor reserves the right to approve or disapprove the designation of the Assigned Pharmacist and may request further information from the Contractor before making either decision. The Assigned Pharmacist will work with/answer to the Facility's Contract Monitor and Chief Medical Officer/Medical Director or designee.

- A. If the intended Assigned Pharmacist is approved by the Contract Monitor, as long as this person is employed by, or is the Contractor, this person shall perform in this capacity for the duration of the Contract, unless a substitution is approved. Except for periods of illness, vacation/holiday, vacancy, or other than normal working hours, it is expected that the Assigned Pharmacist shall directly fill or supervise the filling of all prescriptions for any patient/resident/client of the Facility. In these acceptable periods of absence prescriptions shall be filled or the filling shall be supervised by a Back-up Pharmacist.
- B. If the intended Assigned Pharmacist is not approved by the Contract Monitor the apparent successful Bidder shall, within three (3) working days of the disapproval, identify another individual to serve in this capacity. The apparent successful Bidder shall continue identifying intended Assigned Pharmacists until one (1) is approved by the Contract Monitor, or until the provision of §2.3.4.1 C is invoked.
- C. In the event within thirty (30) days of notification of proposed Contract award the apparent successful Bidder does not obtain the approval of the Contract Monitor for any of the individuals proposed to be the Assigned Pharmacist, the Procurement Officer may revoke the apparent successful Bidder designation and determine that Bidder to be not responsible, in which case that Bidder shall be eliminated from award consideration. In this event the next Bidder in line for the award shall be designated as the apparent successful Bidder and this process shall begin anew with that Bidder.
- D. In the event an individual is approved by the Contract Monitor to be the Assigned Pharmacist, but at any time during the Contract term the Contract Monitor determines that individual to be absent too frequently or otherwise not properly performing the duties of the Assigned Pharmacist:
 - i. The Facility Contract Monitor may require a Back-up Pharmacist to be designated as the Assigned Pharmacist, in which case the procedure as described in this scope of work shall be followed to obtain a new Back-up Pharmacist; or,
 - ii. The Procurement Officer may terminate the Contract for default.
- E. The Contractor shall be required to provide evidence upon request that each Pharmacist's performance has been evaluated on at least an annual basis. The performance appraisal must be in accordance with the standards of The Joint Commission, based on at least the written job description and key competencies.

2.3.5 Back-up Pharmacist(s)

Upon approval of the Assigned Pharmacist as described in 2.3.4.1, or simultaneously with that process, the apparent successful Bidder shall identify one or more Pharmacists to be a Back-up

Pharmacist to fill or oversee the filling of prescriptions for the Facility patients/residents/clients in the absence of the Assigned Pharmacist.

2.3.6 Medical Examination of Employees

Prior to beginning work, and in keeping with each Facility's infection control regulations, each employee of the Contractor who will provide services for the Facility (whether this be a Pharmacist, a courier, or other personnel) shall be required to pass a medical examination to exclude communicable disease. This examination shall be completed by a licensed physician and shall include, at a minimum:

- A. A statement of general health.
- B. Tuberculosis test via the intradermal PPD test. All employees of the Contractor who provide services at the Facility must be certified free of tuberculosis before working in the facility and each must be tested annually thereafter and be certified as tuberculosis free for the full duration of the Contract. The Contractor shall provide verification of tuberculosis testing of each employee to the Contract Monitor annually and at the time of hiring new employees who will provide services at the Facility.
- C. The Contractor shall provide documentation to the Contract Monitor that any employee of the Contractor providing services at the Facility has either received or been offered and declined a Hepatitis B vaccination series prior to the employee providing services at the Facility.
- D. Random drug testing may be required.

All costs of the above medical examinations and testing shall be the responsibility of the Contractor.

2.3.7 Professional Services

- 2.3.7.1 The Assigned Pharmacist or Pharmacist designee shall be available during normal business hours (8:00 am through 5:00 pm EST, Monday through Friday, with the exception of approved State holidays) for consultation with Facility physicians and nursing staff regarding routine matters, medication selection and prescribing, including advice on drugs of choice for therapeutic indications, cost-effective prescribing practices, drug interactions, and other aspects of pharmacy and therapeutics which are recognized to be in the Pharmacist's area of professional expertise. There shall be an on-call Pharmacist, who is an employee of the Contractor, available 24 hours per day/7 days per week, for urgent and unusual medication selection and prescribing matters and consultations. There shall be no additional compensation for consulting services provided.
- 2.3.7.2 A licensed Pharmacist shall review and initial each medication order prior to dispensing the medication. The Contractor shall have a licensed Pharmacist(s) check the content of each individual/blister pack unit-dose package and each cassette before delivery to the Facility. Documentation of the Pharmacist's review shall be maintained by the Contractor and provided to the Contract Monitor upon request. Each order will be reviewed for possible patient/resident/client allergy and for drug-drug or drug food interaction.

- 2.3.7.3 The Pharmacist shall notify the prescribing physician of any possible allergy or drug-drug/drug-food interaction and not dispense the medication until the allergy or interaction issue is resolved to the satisfaction of the Pharmacist and prescribing physician or physician designee. When the Pharmacist has a question about a medication order, he/she shall resolve it with the prescribing physician and record the communication and follow-up action in a log book or electronic record. This procedure shall be followed for medication orders that may have an adverse medication reaction or for any occurrence when the Pharmacist is not clear what the physician's intent is. Copies shall be filed and accessible for review at the next quarterly meeting at the Facility's Pharmacy and Therapeutics Committee. The Pharmacist or designee shall provide continuous pharmacy consultation services, including areas such as advice on drugs of choice for therapeutic indications, cost-effective prescribing practices, drug interactions, etc.
- 2.3.7.4 The Assigned Pharmacist or Pharmacist designee shall attend and participate in all Facility quarterly Pharmacy and Therapeutics Committee meetings. The Assigned Pharmacist or Pharmacist designee shall provide all required pharmaceutical and cost-related information to enable the Pharmacy and Therapeutics Committee to formulate appropriate policies and procedures to achieve consensus on efficacious and cost-effective prescribing practices and to design and carry out pharmacy-related quality assurance activities. The Assigned Pharmacist or Pharmacist designee shall provide reports of medication errors, adverse reactions and other incidents, and reports of drug utilization at each meeting. The Assigned Pharmacist or Pharmacist designee shall submit reports quarterly to the Pharmacy and Therapeutics Committee detailing the current status of the Facility's pharmacy services, including description of problems occurring in the delivery of pharmacy services with suggestion for policy and procedure changes. The first report will be due the first full calendar quarter after services have begun with subsequent reports submitted quarterly thereafter. The Contractor shall present the quarterly report at the committee meeting; date and time to be determined by the Facility.
- 2.3.7.5 The Assigned Pharmacist or Pharmacist designee shall conduct clinical reviews of any **new** patient/resident/client's chart on site within five (5) business days of notification by the Facility of a new admission, and an in-depth clinical record review of a patient/resident/client's chart on an as needed basis as required by the Facility. This could include some medications not provided by the Contractor. These reviews may be performed by the Contractor at the Contractor's facility upon written approval by the Facility Contract Monitor.
- 2.3.7.6 The Contractor's Assigned Pharmacist or Pharmacist designee shall review each patient/resident/client's medications every quarter. The scheduling of these reviews will be per an agreement between the Contractor and the Facility Contract Monitor. The results of the patient/resident/client medication reviews will be recorded on a quarterly medication review form. The reviews will cover, at a minimum, a review of the patient/resident/client's medications, diagnoses, recent laboratory tests, and clinical status. The Assigned Pharmacist or Pharmacist designee will provide, on the quarterly medication review form, any comments or recommendations regarding the patient/resident/client's medication treatment. These reviews may be performed by the Contractor at the Contractor's facility upon written approval by the Facility Contract Monitor. The

- Contractor will notify the Facility Contract Monitor when each review has been completed in order that the primary physician can read the reviews, act upon any recommendations, and sign off on each review.
- 2.3.7.7 The Contractor shall use a Clinical Pharmacist to provide therapeutic drug monitoring including ordering medications based on drug monitoring results, i.e., Amino glycoside dosage, hyper alimentation, etc.
- 2.3.7.8 The Contractor shall maintain a medical profile on each patient/resident/client for whom a prescription is filled. This profile is to include at a minimum the patient/resident/client's name, date of birth, gender, weight, diagnoses, prescribing physician(s), current medication therapy including prescription and non-prescription drugs, medication allergies or sensitivities and potential drug-food interactions. The Contractor shall promptly alert the prescribing physician or medication nurse on duty and Chief Medical Officer, Medical Director, or other designee when contraindications, drug interactions, dosage abnormalities, or other potential drug problems occur or may occur. The Contractor shall maintain other information as deemed appropriate by the Contract Monitor.
- 2.3.7.9 The Contractor shall routinely conduct a prospective review when new medications are prescribed and serve as a consultant and alert the prescribing physician regarding potential adverse drug/drug interactions, potential drug/food interactions and identify by severity level.
- 2.3.7.10 The Contractor shall perform monthly inspections and inventory of the medication carts, medication rooms at each nursing station, emergency and interim boxes, stock supply cabinet(s), and additional areas where pharmaceuticals may be stored or handled as specified by the Facility Contract Monitor. The Contractor shall monitor and update the drug supplies in the emergency and interim drug box and stock supply cabinet monthly to ensure that all listed drugs are present and acceptable for use (i.e., expiration dates are valid, drugs are appropriate strength, etc.). Inspections shall include:
- A. Checking and removing outdated drugs;
 - B. Checking for proper storage of drugs;
 - C. Checking proper refrigerator and freezer temperatures;
 - D. Assuring those antiseptics and other drugs for external use and disinfectants are stored separately from internally administered and injectable medication;
 - E. Assuring that no food items or laboratory specimens are stored in the same refrigerator or freezer as medications;
 - F. Assuring that those drugs requiring special conditions for storage are stored in accordance with current established standards (United States Pharmacopoeia) so that, in the opinion of the Assigned Pharmacist or Pharmacist designee, the integrity, stability, and effectiveness of the drugs are maintained;
 - G. Assuring that all recalled, outdated or otherwise unusable drugs are removed from storage areas, cabinets and boxes, and from the Facility;
 - H. Inspecting medication rooms to be sure they are secure and have properly functioning door locks; and

- I. Inspecting medication carts to be sure they are secure and have properly functioning locks.
- 2.3.7.11 Results of these inspections, recommendations and subsequent corrective action shall be documented (format of report to be approved by the Facility Contract Monitor) and the reports forwarded promptly to the Facility Contract Monitor. The Facility will be responsible for any necessary repairs or adjustments of medication refrigerators/freezers, door locks, or repairs to medication rooms or other medication storage areas. The Contractor shall supply, maintain, and service the interim and emergency medication boxes.
- 2.3.7.12 The Contractor shall provide a minimum of eight (8) hours of in-service training to the Facility's medical and nursing staff each year on drug topics selected in conjunction with the staff, such as: signs of drug deterioration, drug incompatibilities, drug toxicity and optimum drug effect, choice of antibiotics, hypnotics, tranquilizers, etc., and instructions regarding new pharmaceutical products.
- 2.3.7.13 The Assigned Pharmacist or Pharmacist designee may be requested to be present at the Facility during inspections and surveys by regulatory and licensing bodies such as the MDH Office of Health Care Quality (OHCQ) the Joint Commission, the Centers for Medicare and Medicaid Services (CMS), the Maryland Board of Pharmacy or any other regulatory agency whose inspection or survey includes pharmacy services at the Facility.

2.3.8 Equipment To Be Supplied

- 2.3.8.1 Based on current censuses, the Contractor shall provide a minimum number of medication carts as requested by the Facility. The number of carts needed is determined by the number of patients/residents/clients served and the amount of medications each patient/resident/client requires. Additional carts shall be supplied by the Contractor at no additional cost to the Facility. Carts are to be maintained in good working order and shall be replaced if the Facility requests replacement due to the condition and functioning of the cart. Each medication cart shall have a locking storage area containing individual drawers for each patient/resident/client's medication and an area that is under double lock for storing of controlled substances. The Contractor shall furnish this equipment in good working condition without undue blemishes, chips, scratches, or stains. The Facility Contract Monitor shall be the sole judge of the acceptability of the equipment. The equipment shall be the property and responsibility of the Contractor. The Contractor shall be responsible for repair, maintenance or replacement of the carts should they become unusable, inoperable or no longer secure. Restoration to safe working order shall occur within 24 hours of notification of problems. An extra full set of all keys to all medication carts will be maintained by the Facility in a place specified by the Contract Monitor. The Contractor shall provide a loaner or replacement cart in the event the medication cart is out of commission.
- 2.3.8.2 Cabinets (emergency and interim and carts shall be furnished by the Contractor and remain the property and responsibility of the Contractor. Provide medications in unit dose packaging for tablets, capsules, etc. Ensure Facility approved liquids are individually labeled in bottles, tubes, jars, etc. in sizes appropriate to expected individual usage and practical limitations of size

(i.e., the storage unit of the medication shall be equal to the amount of medication prescribed. If a prescription is 10 pills, it shall be in a 10 pill bottle.

- 2.3.8.3 The Contractor shall supply appropriate, secure medication storage containers, approved by the Contract Monitor, for storage of interim and emergency medication supplies.
- 2.3.8.4 The Contractor shall ensure that the Facility has operating electronic plain paper facsimile (FAX) machines. The number and placement of the machines will be determined by each Facility. Machines will possess a transmission time of no longer than 45 seconds per 8 ½" x 11" page. The fax machines will be used to transmit medication orders and other correspondence or data to the Contractor not sent via the Internet or through the EMR interface.
- A. The Contractor shall provide a local number to transmit this data or an "800" number, or some type of similar arrangement which avoids incurring any long-distance telephone charges when communicating with the Contractor.
 - B. The Contractor shall provide all related supplies and cover the cost of those supplies (i.e., drum, toner cartridges) and arrange and bear the cost of maintenance of the fax machine(s). Phone lines used for fax transmissions will be supplied and paid for by the Facility.
 - C. If the fax equipment becomes inoperable, the Contractor will provide a replacement machine or a loaner. If a loaner is provided, the Contractor will have a new machine within two (2) Business Days of notification that the machine is inoperable.
- 2.3.8.5 The Contractor shall provide a secure Internet based tool which allows the physicians and Quality Assurance Department access to specific information on each individual served. This system shall provide:
- A. Access to billing information;
 - B. Drug formulary recommendations;
 - C. Payor status report which ensure that the Facility is billed correctly;
 - D. Access to drug fact information;
 - E. Capacity to **write and** fill pharmacy prescription orders electronically.
- The Contractor shall provide Internet program software that will permit staff to access client medication profiles (current and past), pricing information, drug interaction/allergy information, patient education, physician order sheets, medication sheets, reports, and drug pricing. The Contractor shall provide for submission of prescription orders via the Internet to enable personnel to send prescription orders and/or other appropriate correspondence or data to the Contractor and for the Facility to maintain verification of orders sent.
- 2.3.8.6 The Contractor shall provide training to key personnel at the Facility in the use of all equipment and software supplied.

2.3.9 Forms, Publications and Report

- 2.3.9.1 The Contractor shall provide printed physician order sheets and medication administration record (MAR) forms for each patient/resident/client. Sample forms currently in use will be made available to the Contractor for review upon

Contract award. Prior approval by the Contract Monitor is required if forms other than those currently in use are desired by the Contractor. These forms shall be provided and updated as needed at no additional cost to the Facility. The delivery date and person to receive the forms will be determined by the Facility Contract Monitor.

- A. Physician order sheets shall be provided no later than eight (8) calendar days prior to the medication review date for each patient/resident/client or whenever requested by the Contract Monitor to replenish the supply.
- B. One week prior to each month, and as needed during a month, printed MAR forms shall be provided for each patient/resident/client. The MAR must correspond to the prescribed medications and include the patient/resident/client's name, birth date, chart number, allergies and diagnoses. All currently ordered medications and treatments will be listed on a grid to enable recording the next month's administration of medications and treatments. Medication administration records (MARs) shall be provided for all new admissions within two (2)

Business Days of notification and transmission of medication orders and demographic, allergy and diagnostic data to the Contractor by the Facility. Updated MARs shall be delivered to the Facility prior to the scheduled start of a medication change each month. The Contractor shall provide forms for the month following termination of the Contract. The Facility prefers to access MARs electronically via the web if extra forms are needed.

2.3.9.2 The Contractor shall provide annually one (1) electronic copy of the current Physicians' Desk Reference (PDR).

2.3.9.3 The Contractor shall provide the following reports to the Facility. The minimum information required is identified as follows below; however, the number of copies required and the recipient(s) of each report shall be arranged with the Facility Contract Monitor. Copies of report formats currently in use may be provided with the approval of the Facility Contract Monitor. The delivery date for each report will be in accordance with the schedule determined by the Facility Contract Monitor.

- A. Master Drug Listing. This report is required monthly in a standard electronic format acceptable to the Facility Contract Monitor (such as Adobe PDF, Microsoft Access or Excel). The report shall list the prescriptions written during the previous month. It shall be sorted alphabetically by patient/resident/client and contain the following data elements: drugs prescribed, order date, dosage strength, form and quantity or cumulative quantity of multi-source drugs, NDC code, new medications initiated, cost and prescribing physician. This report shall also include a list of drugs that exceed the FDA recommended dosage and prompt for various laboratory tests needed with specific drugs (i.e., lithium levels). **Data should be coded so that the Facility can filter on psychotropic, somatic, over-the-counter medications, and new generation antipsychotic drugs.**
- B. The Contractor shall provide a quarterly report to the Facility Contract Monitor containing the results of quality indicator monitoring. At least

five (5) significant indicators shall be chosen and approved by the Facility Contract Monitor.

- C. Pharmacy Inspection Reports. This report is required quarterly and contains the result of the Pharmacist's or Pharmacist designee's inspection for all medication administration areas.
- D. Medication Error Report. This report is required monthly and shall list pharmacy related errors and errors in prescribing (see definitions).
- E. If other report data, not presently compiled, are required in the future by accrediting or licensing agencies, the Contractor shall agree to work with the Facility staff to collect additional data and develop an adequate report format.
- F. The Contractor and Assigned Pharmacist or Pharmacist designee shall include full name and address on all forms and reports.

2.3.9.4 The Contractor shall adhere to the Facility's approved "Do Not Use Abbreviations" listing. The approved listing for each facility will be provided to the Contractor by the Facility Contract Monitor.

2.3.10 Drug Formulary

2.3.10.1 The Contractor shall furnish generic drugs if available and covered by Medicaid or other insurance.

2.3.10.2 The Contractor shall fill prescriptions only for drugs as listed in the Facility's formulary unless presented with authorization for non-formulary or "special approval" drugs in accordance with the Facility's policies and procedures (e.g., a medication that has a newly studied application that has not been officially studied by the FDA). The Facility will provide **an original** copy of the formulary; **and the Contractor will need to submit updated copies to the Facility on a quarterly basis**, however the formulary may change as a result of new medications as well as changes in patient/resident/client population. The Contractor and the Facility shall collaborate on the approved formulary for each Facility. The Facility specific formulary shall be current, up-to-date at all times in accordance with accreditation standards.

2.3.10.3 The Contractor shall notify the prescribing physician if a medication is outside of a patient/resident/client's pharmacy benefits manager's drug formulary and recommended possible therapeutic substitutions that fall within the drug formulary.

2.3.10.4 The Contractor shall update the electronic formulary used in the EMR interface as changes are approved and made.

2.3.11 Quality Assurance

2.3.11.1 The Contractor's medication errors shall be no greater than 1% of medication dispensed per month per the number of medications dispensed at each respective Facility. If a higher percentage of error occurs the errors shall constitute a material breach of Contract and the State may terminate the Contract for default, in addition to any other remedies which may be available by the terms of the Contract, applicable by law, or in equity.

2.3.11.2 If the Contractor commits multiple documented medication errors that could result in serious or fatal complications for a person, or persons, those errors, even

if the Contractor's medication error rate is below the 1% monthly threshold, shall constitute a material breach of the Contract and the State may terminate the Contract for default, in addition to any other remedies which may be available by the terms of the Contract, applicable laws, or in equity.

2.3.11.3 The Contractor shall ensure that the places of preparation of medications to be supplied have appropriate space, equipment, and supplies to permit the proper storage, compounding, sterilizing when applicable, packaging, labeling, and dispensing of medications. These areas of preparation must also have appropriate ventilation, including laminar airflow hoods, when necessary and appropriate and required by regulation. Furthermore, adequate quality control methods must be in place regarding the cleaning of equipment and microbiological monitoring. The State reserves the right to inspect the facilities with a 24-hour notice.

2.3.11.4 Upon notification of selection as the apparent awardee, the Contractor shall provide the State with a written description of its quality control program including the monitoring of the qualifications, training and performance of personnel and the monitoring of equipment, facilities, and products; thereafter, the Contractor shall provide a periodic report of the results of such monitoring no less than quarterly. The performance appraisal must be in accordance with The Joint Commission and based on a written job description and include age-specific criteria and key competencies.

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

- A. Contractor shall schedule and hold a kickoff meeting within 10 Business Days of NTP Date. At the kickoff, the Contractor shall furnish an updated Project Schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor's solution.

3.2 End of Contract Transition

- 3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 60 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:
- a) Provide additional services and support as requested to successfully complete the transition;
 - b) Maintain the services called for by the Contract at the required level of proficiency;
 - c) Provide updated System Documentation (see Appendix 1), as appropriate; and
 - d) Provide current operating procedures (as appropriate).
- 3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Facility Contract Monitor. The Facility Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.
- 3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.
- 3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:
- a) The Contractor shall provide a draft Transition-Out Plan 120 Business Days in advance of Contract end date.

The Transition-Out Plan shall address at a minimum the following areas:

- 1) Any staffing concerns/issues related to the closeout of the Contract;
- 2) Communications and reporting process between the Contractor, the Department and the Facility Contract Monitor;
- 3) Security and system access review and closeout;
- 4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the Department or a designee;
- 5) Any final training/orientation of Department staff;
- 6) Connectivity services provided, activities and approximate timelines required for Transition-Out;

- 7) Knowledge transfer, to include:
 - a) A working knowledge of the current system environments;
 - b) Review with the Department the procedures and practices that support the business process and current system environments;
 - c) Working knowledge of all technical and functional matters associated with the solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;
 - d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;
- 8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and
- 9) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.

The Contractor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.

The Contractor shall provide copies of any current daily and weekly back-ups to the Department or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.

Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract as described in **Section 3.2.5**.

3.2.5 Return and Maintenance of State Data

- a) Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- b) During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.

- c) In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

3.3 Invoicing

3.3.1 General

- a) The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the Facility Contract Monitor and any other individual(s) identified for each Facility. The contact information shall be provided by the Facility Contract Monitor.

All invoices for services shall be verified by the Contractor as accurate at the time of submission.

An invoice not satisfying the requirements of a Proper Invoice (as defined in COMAR 21.06.09) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

- 1) Contractor name and address;
- 2) Remittance address;
- 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
- 4) Invoice period (i.e. time period during which services covered by invoice were performed);
- 5) Invoice date;
- 6) Invoice number;
- 7) State assigned Contract number;
- 8) State assigned (Blanket) Purchase Order number(s);
- 9) Goods or services provided;
- 10) Amount due; and
- 11) Any additional documentation required by regulation or the Contract.

Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.

The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.

Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

3.3.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:

- a) For people having insurance, the Contractor shall bill the person’s insurance for any medications and accept the amount paid by that insurance as payment in full. (See Subsection 3.3.4)
- b) For people with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full (See Subsection 3.3.4).
- c) For persons who neither have private insurance nor Medicaid/Medicare/Medical Assistance coverage, invoices shall be submitted by the 21st of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g., over the counter medications supplied by the Contractor and no billable to Medicare/Medical Assistance). The two must reconcile before payment is made.
- d) The invoices shall reflect medication details as follows:
 - i. Listing by person;
 - ii. Drug identification (description plus NDC code);
 - iii. Date of prescription order;
 - iv. Quantity/unit dispensed;
 - v. Number of times dispensed; and
 - vi. Total cost per person.

3.3.3 Billing

- a) If the Contractor makes more than one purchase of a legend or non-legend drug or medical supply item during a month, the Actual Acquisition Cost shall be construed to be the amount invoiced to the Contractor closest to the end of the month in which the drug is provided to the Facility.
- b) If the Contractor does not purchase a legend or non-legend drug or medical supply item during the same month that such drug or item is provided to the Facility under this Contract, the Actual Acquisition Cost shall be construed to be the amount invoiced to the Contractor for its most recent purchase of that drug or item. For example, if a medication is purchased in March, April and May, and dispensed to other persons regularly, but not provided to the Facility until August, the Contractor shall use the price of the medication in May as the Acquisition Price for the Facility.
- c) However, if the Contractor makes purchases of overstock or soon to be outdated drugs or items at discounted prices, the Actual Acquisition Cost shall be construed to be the Contractor’s lowest invoiced discounted price paid for the item, regardless of when during the month the item was purchased by the Contractor or the quantities purchased.

- d) The Contractor shall provide invoices giving evidence of the Actual Acquisition Cost paid by the vendor and billed to the Facility.

3.3.4 Reimbursement

- a) The Facility shall provide its best available information on annual Medicaid billing. THERE IS NO ASSURANCE THAT THE FACILITY WILL GENERATE SIMILAR BILLING IN THE FUTURE. In addition, the Facility believes that there may be additional revenues available from filling prescriptions under Medicare Part D, private insurance, and no insurance situations.
- b) The Facility is to be billed for any co-pay and will be responsible to the Contractor for payment under the provisions of item (vii.) below. The information shall include patient/resident/client name, drug, date of delivery, amount of drug cost, and amount of co-pay. In the instances where there is no insurance, the Contractor is to bill, and accept, the Medicaid rate which will be paid by the Facility (including any applicable co-pay). Should the procedure change and the Facility request that all or any patients/residents/clients be billed directly for any co-pay, the Facility will guarantee payment after the Contractor has made a good faith effort to collect the money.
 - i. When a patient/resident/client has prescription insurance coverage, that insurance will be billed for the patient/resident/client's medications and supplies. This payment will be accepted as primary coverage and payment will be accepted as payment in full. This includes Medical Assistance, Medicare D, or any private insurance provider. In the event a prescription is not covered by a patient/resident/client's plan, the Contractor will notify the physician with a suggested substitute that is covered by the patient/resident/client's plan.
 - ii. Prior approvals: The Contractor shall notify the prescribing physician if prior approval for a medication is required by the patient/resident/client's pharmacy benefits manager.
 - iii. Client summary shall be submitted monthly in duplicate in both summary format and a detail form. **THE TWO MUST RECONCILE.** The following detail information is needed at the time of delivery and another with a monthly summary statement.
 - 1. Client summary shall reflect the following information: Vendor identification date (name, address, Federal Tax ID number, and a contract control number). Grand total of all charges for the month (Medical Assistance, Private Pay, and the Facility).
 - 2. Patient/resident/client detail shall reflect the following information: Alphabetical listing by patient/resident/client name, Drug identification (description plus NDC Code), Date of prescription order, Quantity/Unit dispensed, Unit cost of the medication (with decimal place extension), Agency/Individual billed for medication, Over-the-County medications by patient/resident/client, and Total cost per medication dispensed to each patient/resident/client (i.e., John Doe's Depakote, John Doe's Ritalin).
 - 3. Patient/resident/clients must be separately tracked for data retrieval in the following categories: Medical Assistance, Private Pay, and Facility.
 - 4. The Contractor shall accept complete responsibility for securing payment for prescription drugs from the private insurance company and/or from Medical Assistance.
 - 5. The Facility agrees to notify the Contractor as to the status of each patient/resident/client regarding source of reimbursement for prescription drugs

and supplies and shall promptly notify the Contractor as to any change in status or source of reimbursement. The Facility will give the Contractor reasonable access to all patient/resident/client records, space, and supplies necessary for the performance of pharmacy duties therein, and the Contractor agrees that it shall furnish to the Facility upon request all reciprocal information relating to the drugs and supplies furnished to the Facility patients/residents/clients therein.

6. The Contractor shall bill the responsible party directly for all patients/resident/clients using private insurance for which services are provided. In the event of any dispute arising from any claims or bill submitted by the Contractor, the Contractor shall have access to all reasonable and necessary documents and records that would, in the discretion of the Contractor, tend to sustain its claim. Further, where the Facility is an intermediary in the processing of said claim, the Facility shall promptly furnish to the Contractor all information regarding the status of the claim and shall grant to any fiscal agency involved the right to discuss the status of the claim with the Contractor.
7. The Contractor shall bill Medicaid directly for all medications covered by Medicaid. Billing and Collection Procedures and tactics to be used by the Contractor shall follow good business practices. The Contractor shall be provided by the Facility with information to facilitate for collection of co-payments from individuals or parents/guardians. If the Contractor is unable to collect after reasonable efforts, the Facility shall assist in the following manner:
 - a) Provide to the Contractor the billing method agreed upon by the parent/guardian,
 - b) The Contractor shall inform the Facility after thirty (30) days of any billed and non-collected payments so that the Facility can do an intervention,
 - c) After sixty (60) days, the Facility will assume responsibility for payment for unpaid co-pays, to the extent funding for such payment is appropriated and available.

3.3.5 For the purposes of the Contract an amount will not be deemed due and payable if:

- a) The amount invoiced is inconsistent with the Contract;
- b) The proper invoice has not been received by the party or office specified in the Contract;
- c) The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- d) The item or services have not been accepted;
- e) The quantity of items delivered is less than the quantity ordered;
- f) The items or services do not meet the quality requirements of the Contract;
- g) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- h) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or

- i) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

3.3.6 Travel Reimbursement

Travel will not be reimbursed under this IFB.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

Inapplicable because there is no MBE goal for this IFB.

3.4.2 Liquidated Damages other than MBE

THIS SECTION IS INAPPLICABLE TO THIS IFB.

3.5 Disaster Recovery and Data

The following requirements apply to the Contract:

3.5.1 Redundancy, Data Backup and Disaster Recovery

- a) Unless specified otherwise in the IFB, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- b) The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
 - 1) The Contractor shall furnish a DR site.
 - 2) The DR site shall be at least 100 miles from the primary operations site and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- c) The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- d) The Contractor shall test the contingency/DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.

- e) Such contingency and DR plans shall be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.5.2 Data Export/Import

- a) The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:
 - 1) perform a full or partial import/export of State data within 24 hours of a request; or
 - 2) provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.
- b) Any import or export shall be in a secure format per the Security Requirements.

3.5.3 Data Ownership and Access

- a) Data, databases and derived data products created, collected, manipulated, or directly purchased as part of an IFB are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.

Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.

The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.

At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.

The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

3.5.4 Provisions in Sections 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.5.1-3.5.3 (or the substance thereof) in all subcontracts.

3.6 Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:

- a) Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required

herein may be satisfied through any combination of primary and umbrella/excess liability policies.

- b) Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
- c) Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a "loss payee."
- d) Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
- e) Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

3.6.1.1 Additionally, the Contractor shall possess and maintain throughout the term of the awarded Contract and for three (3) years thereafter, Cyber Risk/ Data Breach insurance (either separately or as part of a broad Professional Liability or Errors and Omissions Insurance) with limits of at least US \$10 million (\$10,000,000) per claim. Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies). Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations under the Contract and shall include, but not be limited to, claims involving privacy violations, information theft, damage to or destruction of electronic information, release of Sensitive Data, and alteration of electronic information, extortion and network security. The policy shall provide coverage for, not by way of limitation, breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- 3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.
- 3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such

cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

- 3.6.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.
- 3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.
- 3.6.6 The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.7 Security Requirements

The following requirements are applicable to the Contract:

3.7.1 Employee Identification

- a) Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- b) Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- c) Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- d) The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

3.7.2 Security Clearance / Criminal Background Check

- a) A criminal background check for each Pharmacist that will provide any of the services under this Contract shall be completed prior to each Contractor Personnel providing any services under the Contract.
- b) The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- c) Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse

any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

- d) The CJIS criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:
 - 1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);
 - 2) any crime within Title 7, Subtitle 1 (various crimes involving theft);
 - 3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
 - 4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);
 - 5) §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
 - 6) a crime of violence as defined in CL § 14-101(a).
- e) Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on State premises under the Contract; Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.

3.7.3 On-Site Security Requirement(s)

- a) For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
 - 1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
 - 2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.

- b) Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the Department may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department.
- c) Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that control the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default

3.7.4 Information Technology

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.7.5 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

- 1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.
- 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <http://iase.disa.mil/Pages/index.aspx>, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.
- 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
- 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
- 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.

- 11) By default “deny all” and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability’s identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect the Contractor’s policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
- 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology’s Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States (“U.S.”). The Contractor shall provide its services to the State and the State’s end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
- 16) Ensure Contractor’s Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor -owned equipment to a State LAN/WAN.
- 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
- 18) Conduct regular external vulnerability testing designed to examine the service provider’s security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service’s security and integrity and remediate the vulnerability promptly or

document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

3.7.6 Security Logs and Reports Access

- d) For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.
- e) Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to the Contract.

3.7.7 Security Plan

- a) The Contractor shall protect State data according to a written security policy (“Security Plan”) no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.

The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.

3.7.8 PCI Compliance

- A. Contractor shall at all times comply, and ensure compliance with, all applicable Payment Card Industry (“PCI”) Data Security Standards (“DSS”), including any and all changes thereto. Contractor shall provide the Department with documented evidence of current compliance to PCI DSS within 30 days of a Department request.
- B. The Contractor shall annually furnish to the State evidence of the PCI Security Standards Council’s (SSC) acceptance or attestation of the Contractor’s conformance to the relevant PCI DSS requirements by a third party certified to perform compliance assessments.
- C. The Contractor shall ensure that the scope of the annual SOC 2 Type II Report specified under **Section 3.9** includes testing to confirm the PCI assessment results.

3.7.9 Security Incident Response

- A. The Contractor shall notify the Department in accordance with **Section 3.7.9A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
 - 1) notify the Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Department chief information officer and Department chief information security officer;
 - 2) notify the Department within two (2) hours if there is a threat to Contractor’s solution as it pertains to the use, disclosure, and security of State data; and
 - 3) provide written notice to the Department within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.
- B. Contractor’s notice shall identify:
 - 1) the nature of the unauthorized use or disclosure;
 - 2) the State data used or disclosed,

- 3) who made the unauthorized use or received the unauthorized disclosure;
 - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or Department) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

3.7.10 Data Breach Responsibilities

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
 - 2) Cooperate with the State to investigate and resolve the data breach;
 - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
 - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

3.7.11 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

3.7.12 Provisions in Sections 3.7.1 – 3.7.10 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.7.4-3.7.10 (or the substance thereof) in all subcontracts.

3.8 Problem Escalation Procedure

- 3.8.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.8.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.8.3 The Contractor shall provide the PEP no later than ten (10) Business Days after notice of recommended award or after the date of the Notice to Proceed, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a) The process for establishing the existence of a problem;
 - b) Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - c) For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
 - d) Expedited escalation procedures and any circumstances that would trigger expediting them;
 - e) The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - f) Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
 - g) A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.8.4 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.9 SOC 2 Type 2 Audit Report

3.9.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust services criteria are: Security, Availability, and Confidentiality as defined in the Guidance described in Section 3.9.2 below

3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit, performed by an independent audit firm, of the Contractor's handling of Sensitive Data or the MD Department of Health's critical functions. Critical functions are identified as all aspects and functionality of the solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: SOC 2 Reporting on

an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the MD Department of Health, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- a) The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section 3.9.2 (f) below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- b) The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust services criteria identified in 3.9.1: as defined in the aforementioned Guidance.
- c) The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services criteria of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- d) The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the MD Department of Health under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- e) All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the MD Department of Health.
- f) The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- g) If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the MD Department of Health under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the MD Department of Health will determine in consultation with appropriate State government technology and audit authorities whether the Contractor’s current information security assessments are acceptable in lieu of the SOC 2 Report(s).

h) If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the MD Department of Health shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The MD Department of Health will invoice the Contractor for the expense of the SOC 2 Report(s) or deduct the cost from future payments to the Contractor.

i) Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

3.10 Minority Business Enterprise (MBE) Reports

This solicitation does not include an MBE goal.

3.11 Veteran Small Business Enterprise (VSBE) Reports

This solicitation does not include a VSBE Goal.

3.12 Additional Clauses

3.12.1 No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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4 Procurement Instructions

4.1 Pre-Bid Conference Call

- 4.1.1 A Pre-Bid Conference Call (Conference) Meeting will be held at the date and time as indicated on the Key Information Summary Sheet.
- 4.1.2 Participation at the Conference call is not mandatory, but all interested parties are encouraged to participate in order to facilitate better preparation of their Bids.
- 4.1.3 It is highly recommended that ALL Prime Contractors encourage their intended subcontractors, including MBE subcontractors, to participate on the Conference call to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to participate in the Conference call to market their participation to potential prime contractors.
- 4.1.5 Following the Conference call, the participation/sign-in record (consisting of the list of all calendar invitees) and summary of the Conference call will be distributed via the same mechanism described for amendments and questions (see Section 4.2.1 eMMA).
- 4.1.6 In order to participate in the Conference call, all interested parties shall e-mail the Pre-Bid Conference Call Response Form (**Attachment A**) to the Contract Officer no later than two (2) Business Days prior to the Conference date.

4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The IFB, Conference summary and attendance sheet, Bidders' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to <https://procurement.maryland.gov>, click on "Register" to begin the process, and then follow the prompts.

4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title 20-18592- Pharmaceutical Services), and shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Bid due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Bid due date.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for IFB amendments and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the Department unless it issues an amendment on eMMA.

4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

4.5 Bid Due (Closing) Date and Time

- 4.5.1 Bids, in the number and form set forth in **Section 5 Bid Format**, must be submitted electronically and received by the Contract Officer no later than the Bid due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.
- 4.5.4 Bids may be modified or withdrawn by written notice received and acknowledged by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Bids.
- 4.5.5 Bids must be submitted by e-mail as indicated on the Key Information Summary Sheet. Bidders shall not be permitted to deliver a hard copy (paper) Bid to the Procurement Officer. Bids will be opened publicly via conference call at the date and time indicated on the Key Information Summary Sheet.
- 4.5.6 Potential Bidders not responding to this solicitation are requested to submit the “No Bid Notice/Vendor Feedback” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Multiple or Alternate Bids

Multiple or alternate Bids will not be accepted.

4.7 Receipt, Opening and Recording of Bids

- 4.7.1.1 Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.
- 4.7.1.2 Bids shall be opened publicly, at the time, date and place designated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). The name of each Bidder, the Total Bid Price, and such other information as is deemed appropriate shall be read aloud or otherwise made available and recorded at the time of bid opening.
- 4.7.1.3 Before Bid opening, each bidder will be contacted by the Contract Officer to obtain the password required to open each bid.

4.8 Confidentiality of Bids / Public Information Act Notice

- 4.8.1 The Bidder should give specific attention to the clear identification of those portions of its Bid that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. This information should be identified by page number and placed in the Transmittal Letter with the Bid.

- 4.8.2 The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but, in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.
- 4.8.3 For requests for information made under the PIA, the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

4.9 Award Basis

- 4.9.1 A Contract shall be awarded to the responsible Bidder(s) submitting a responsive Bid with the most favorable bid price or most favorable evaluated bid price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. Bidders must bid all line items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation. See IFB Section 6 for Bid evaluation and award information.
- 4.9.2 Award of this contract will not be final and complete until after: (1) the Contractor submits complete and satisfactory documentation required under the Contract and/or documentation required by the Procurement Officer; and (2) the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.

4.10 Tie Bids

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

4.11 Duration of Bids

Bids submitted in response to this IFB are irrevocable for the latest of the following: 120 days following the Bid due date and time or the date any protest concerning this IFB is finally resolved. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

4.12 Revisions to the IFB

- 4.12.1 If the IFB is revised before the due date for Bids, the Department shall post any addenda to the IFB on eMMA and shall endeavor to provide such addenda to all prospective Bidders that were sent this IFB or are otherwise known by the Procurement Officer to have obtained this IFB. It remains the responsibility of all prospective Bidders to check eMMA for any addenda issued prior to the submission of Bids.
- 4.12.2 Bidders shall acknowledge the receipt of all addenda to this IFB issued before the Bid due date.
- 4.12.3 Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be deemed not responsive.

4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this IFB, accept or reject any and all Bids, in whole or in part, received in response to this IFB and to waive or permit the cure of minor irregularities.

- 4.13.2 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.3 If the services that are the subject of the IFB are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the IFB may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or performing any other activities related to submitting a Bid in response to this solicitation.

4.15 Protest/Disputes

Any protest or dispute related to this solicitation or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

4.16 Bidder Responsibilities

- 4.16.1 Bidders must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2 If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this IFB (see **Section 4.26** “MBE Participation Goal” and **Section 4.27** “VSBE Goal”).
- 4.16.3 If the Bidder is the subsidiary of another entity, all information submitted by the Bidder, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder’s Bid shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.4 A parental guarantee of the performance of the Bidder under this Section will not automatically result in crediting the Bidder with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Bidder’s experience and qualifications. Instead, the Bidder’s responsibility will be assessed to the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Bidder, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent’s participation as determined by the State.

4.17 Acceptance of Terms and Conditions

By submitting a Bid in response to this IFB, the Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached hereto as Attachment M. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.

4.18 Bid/Proposal Affidavit

A Bid submitted by the Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB.

4.19 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

4.20 Compliance with Laws/Arrearages

By submitting a Bid in response to this IFB, the Bidder, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Bidder complete registration prior to the Bid due date and time. The Bidder’s failure to complete registration with SDAT may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

4.22 False Statements

Bidders are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

4.22.1 In connection with a procurement contract a person may not willfully:

- a) Falsify, conceal, or suppress a material fact by any scheme or device.
- b) Make a false or fraudulent statement or representation of a material fact.
- c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

4.23 Payments by Electronic Funds Transfer

By submitting a Bid in response to this solicitation, the Bidder, if selected for award:

- 4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:
http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**). Additional information is available on GOSBA's website at:
<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this IFB, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., IFB § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
- a) The Procurement Officer may conduct the procurement using eMMA, e-mail, or facsimile to issue:
 - 1) The IFB;
 - 2) Any amendments;

- 3) Pre-Bid conference documents;
- 4) Questions and responses;
- 5) Communications regarding the solicitation or Bid to any Bidder or potential Bidder;
- 6) Notices of award selection or non-selection; and
- 7) The Procurement Officer's decision on any Bid protest or Contract claim.

The Bidder or potential Bidder may use e-mail to:

- 8) Ask questions regarding the solicitation;
- 9) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer and;
- 10) Submit a "No Bid Notice/Vendor Feedback Form" to the IFB.

The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are **not authorized** to be conducted by electronic means:

- A. Filing of bid protests;
- B. Filing of Contract claims;
- C. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- D. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder be provided in writing or hard copy.

4.25.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

4.26 MBE Participation Goal

There is no MBE subcontractor participation goal for this procurement.

4.27 VSBE Goal

There is no VSBE participation goal for this procurement.

4.28 Living Wage Requirements

- a) Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living

Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

Additional information regarding the State's living wage requirement is contained in **Attachment F**. Bidders must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Bids. If the Bidder fails to complete and submit the required documentation, the State may determine the Bidder to not be responsible under State law.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.

- 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.
- 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder must identify in its Bid the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.

The Bidder shall identify in the Bid the location from which services will be provided.

NOTE: Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change. The Contractor shall be responsible for any wage/rate increase during the term of the Contract and such increase may not be passed on to the State.

4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

- 4.30.1 The Bidder shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Bid.
- 4.30.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under OR individual Task Orders issued under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Bidders are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Bidder submitting a Bid in violation of this provision shall be classified as “not responsible.”

4.31 Non-Disclosure Agreement

4.31.1 Non-Disclosure Agreement (Bidder)

A Non-Disclosure Agreement (Bidder) is not required for this procurement.

4.31.2 Non-Disclosure Agreement (Contractor)

All Bidders are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

4.32 HIPAA - Business Associate Agreement

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of

proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder with the next highest overall-ranked Bid.

4.33 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

4.34 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.35 Location of the Performance of Services Disclosure

The Bidder is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Bid.

4.36 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

4.38 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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5 Bid Format

5.1 One Part Submission

All bids and attachments for this solicitation must *be password protected* and submitted via information listed on the Key Information Sheet.

5.2 Labeling

Labeling is not a required for this solicitation.

5.3 Bid Price Form

The Bid shall contain all price information in the format specified on the Bid Form. The Bidder shall complete the Bid Form only as provided in the Bid Pricing Instructions and the Bid Form. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

5.4 Required Bid Submission

A Bidder shall include the following with its Bid:

- 5.4.1 **Bidder Information Sheet** (see **Appendix 2**)
- 5.4.2 **Acknowledgement** of all addenda to this IFB.
- 5.4.3 **Minimum Qualifications Documentation.** The Bidder shall submit any Minimum Qualifications documentation that may be required, as set forth in **IFB Section 1**. If references are required in **IFB Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1**.
- 5.4.4 **Completed Required Attachments.** Submit three (3) sets of each with original signatures:
 - 1) Completed Bid Form (**Attachment B**).
 - 2) Completed Bid Affidavit (**Attachment C**).
 - 3) Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).
- 5.4.5 **Additional Document *If Required.** Submit three (3) sets of each with original signatures, if required. *See appropriate IFB section to determine whether the document is required for this procurement.
 - 1) A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. *see **IFB section 4.16**
 - 2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) *see **IFB section 4.26**
 - 3) Completed Federal Funds Attachment (**Attachment G**) *see **IFB section 4.29**
 - 4) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) *see **IFB section 4.30**
 - 5) Completed Mercury Affidavit (**Attachment K**) *see **IFB section 4.34**
 - 6) Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) *see **IFB section 4.27**

- 7) Completed Location of the Performance of Services Disclosure (**Attachment L**) *see **IFB section 4.35.**

5.4.6 **References.** At least three (3) references are requested from customers who are capable of documenting the Bidder's ability to provide the goods and services specified in this IFB. References used to meet any Minimum Qualifications (see **IFB Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.

The Department reserves the right to request additional references or utilize references not provided by the Bidder. Points of contact must be accessible and knowledgeable regarding Bidder performance.

5.4.7 **List of Current or Prior State Contracts.** Provide a list of all contracts with any entity of the State of Maryland for which the Bidder is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder is to provide:

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;
- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Bidder's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Bidder and considered as part of the experience and past performance evaluation criteria of the IFB.

5.4.8 **Financial Capability.** The Bidder must include in its Bid a commonly-accepted method to prove its fiscal integrity. If available, the Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Bidder may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

- 5.4.9 **Certificate of Insurance.** The Bidder shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Bid submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.
- 5.4.10 **Subcontractors.** The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this IFB.
- 5.4.11 **Legal Action Summary.** This summary shall include:
- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
 - 2) A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
 - 3) A description of any judgments against the Bidder within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
 - 4) In instances where litigation is ongoing and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.

5.5 Delivery

- 5.5.1 Bids must be submitted via Key Information Sheet directions.

5.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a notification of recommendation for contract award, the following documents shall be completed and submitted by the recommended awardee within five (5) business days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- A. Signed contract (Attachment M),
- B. Completed Contract Affidavit (Attachment N),
- C. Completed MBE Attachments D-2 and D-3A and B, within ten (10) Business days, if applicable; see IFB Section 4.26,
- D. MBE waiver justification within ten (10) Business days (see MBE Waiver Guidance and forms in Attachments D-1B and D-1C), if a waiver has been requested (if applicable; see IFB Section 4.26),
- E. Completed VSBE Attachment E-2, if applicable see IFB Section 4.27,
- F. Signed Non-Disclosure Agreement (Attachment I), if applicable; see IFB Section 4.31,
- G. Signed HIPAA Business Associate Agreement (Attachment J), if applicable; see IFB Section 4.32,
- H. Completed DHR Hiring Agreement, Attachment O, if applicable see IFB Section 4.36, and

- I. Copy of a current certificate of insurance with the prescribed limits set forth in IFB Section 3.1 “Insurance Requirements,” listing the State as an Additional Insured, if applicable; see IFB Section 3.1.

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6 Bid Evaluation and Award

6.1 Bid Evaluation Criteria

The Bids will be evaluated based on the Total Bid Price, as per COMAR 21.02.13. All responsible Bidders will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Bid Prices submitted on the **Attachment B** - Bid Form.

6.2 Reciprocal Preference

6.2.1 Although Maryland law does not authorize procuring agencies to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

- a) The Maryland resident business is a responsible Bidder;
- b) The lowest responsive Bid is from a responsible Bidder whose principal office, or principal base of operations is in another state;
- c) The other state gives a preference to its resident businesses through law, policy, or practice; and
- d) The preference does not conflict with a federal law or grant affecting the procurement Contract.

6.2.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

6.3 Award Determination

Award will be made to the responsible Bidder (s) who submits to the State the responsive Bid that has the lowest Total Bid Price.

6.4 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – IFB Attachments and Appendices**.

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7 IFB ATTACHMENTS AND APPENDICES

Instructions Page

A Bid submitted by the Bidder must be accompanied by the completed forms and/or affidavits identified as “with Bid” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this IFB, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Bid:

1. For e-mail submissions, submit one (1) copy of each with signatures.

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

Table 1: IFB ATTACHMENTS AND APPENDICES

Applies?	When to Submit	Label	Attachment Name
Y	Before Bid	A	Pre-Bid Conference Response Form
Y	With Bid	B	Bid Instructions and Form
Y	With Bid	C	Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)
N	With Bid	D	MBE Forms D-1A
N	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B
N	As directed in forms	D	MBE Forms D-4A, D-4B, D-5
N	With Bid	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A
N	5 Business Days after recommended award	E	VSBE Forms E-1B, E-2, E-3
Y	With Bid	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf)

Applies?	When to Submit	Label	Attachment Name
N	n/a	G	Federal Funds Attachments
Y	With Bid	H	Conflict of Interest Affidavit and Disclosure (see link at https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf)
Y	5 Business Days after recommended award – However, suggested with Bid	I	Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf)
Y	5 Business Days after recommended award – However, suggested with Bid	J	HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf)
N	With Bid	K	Mercury Affidavit
Y	n/a	L	Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf)
Y	5 Business Days after recommended award	M	Sample Contract (included in this IFB)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf)
N	n/a	O	DHS Hiring Agreement
Appendices			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this IFB)
Y	With Bid	2	Bidder Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf)
Y	n/a	3.1 – 3.6	Facility Specific Information
Y	n/a	4	Physician’s Order Form

Applies?	When to Submit	Label	Attachment Name
Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.6); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

Attachment A. Pre-Bid Conference Response Form

Solicitation Number MDH/OPASS 20-18592

Pharmaceutical Services

Deer’s Head Center, Holly Center, Potomac Center, RICA-Baltimore, RICA-Rockville, Western MD
Hospital Center

A Pre-Bid conference will be held on **Friday, May 22, 2020, 10:00 a.m.** local time, via conference call # **1-720-443-4317 (PIN 390514572).**

Please return this form by **Wednesday, May 20, 2020**, advising your firm plans to participate. The completed form should be returned via e-mail to the contact information below:

Theresa B. Ammons, Contract Officer
MDH, Office of Procurement & Support Services
E-mail: Theresa.ammons@maryland.gov

Please indicate:

_____ Yes, the following representatives will be in attendance on the conference call.

Company Name	Attendee Name	Email Address	Telephone Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ No, we will not participate in the Conference Call.

Offeror: _____
Offeror Name (please print or type)

By: _____
Signature/Seal

Printed Name: _____
Printed Name

Title: _____
Title

Date: _____
Date

Business Address: _____
Business Address

Email Address: _____
Email Address

Phone Number: _____
Phone Number

Attachment B. Bid Instructions & Form

B-1 Bid Instructions

In order to assist each Bidder in the preparation of its Bid and to comply with the requirements of this solicitation, Bid Instructions and a Bid Form have been prepared. Each Bidder shall submit its Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid may be determined to be not reasonably susceptible of being selected for award. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Bid Form shall be filled in. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Bid not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03.F and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.
- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for evaluation purposes only. Unless stated otherwise in the IFB, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- K) Failure to adhere to any of these instructions may result in the Bid being determined not reasonably susceptible of being selected for award.

- L) Bidders are instructed to use the Excel File provided separately as “APPENDIX 2 – BID FORM”. Enter information in only the “yellow” fields in the Excel File. All other fields are locked. The Excel File will automatically make the calculations described below in the “blue” fields.
- M) Bidder’s Actual Acquisition Costs for Brand, Generic and Over-the-Counter drugs shall be current costs as of December 31, 2018. These costs shall be verified by providing a print out to the Procurement Officer from the Bidders’ supplier showing the cost for the drugs listed.
- N) Drug “Quantity Dispensed” totals listed on the Bid Pages reflects each Facility’s top drugs used within the past year and is to be used for historical data and calculations to determine an award. The listed “Quantity Dispensed” totals do not guarantee any minimum or maximum amounts that will be supplied to each Facility. The “Quantity Dispensed” totals were paid by one or a combination of the following: Medicaid/Medical Assistance, Private Insurance, or the Facility.
- O) While only a portion of the drugs used by the Facility are listed on the Bid Pages, the Contractor is advised that all other drugs shall be sold to the Facility at the Actual Acquisition Cost.
- P) The Contract will be awarded to the responsible Bidder(s) that submits a responsible Bid(s) that is the most favorable Bid price for the total five (5) year Contract for each Facility.
- Q) Drugs and quantities listed are for bidding purposes only. The Facility does not guarantee any minimum or maximum quantities.

B-1 Bid Form

The Bid Form shall contain all price information in the format specified on these pages. Complete the Bid Form only as provided in the Bid Instructions. Do not amend, alter or leave blank any items on the Bid Form. If option years are included, Bidders must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Bid being determined not reasonably susceptible of being selected for award.

See separate Excel Bid Form labeled ATTACHMENT B – Bid Form.

Attachment C. Bid/Proposal Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

Attachment D. Minority Business Enterprise (MBE) Forms

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
 - (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

Attachment G. Federal Funds Attachments

This solicitation does not include a Federal Funds Attachment.

Attachment H. Conflict of Interest Affidavit and Disclosure

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>.

Attachment I. Non-Disclosure Agreement (Contractor)

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

Attachment J. HIPAA Business Associate Agreement

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf>.

Attachment K. Mercury Affidavit

A Mercury Affidavit is not applicable to this solicitation.

Attachment L. Location of the Performance of Services Disclosure

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

Attachment M. Contract

MARYLAND DEPARTMENT OF HEALTH (MDH)

“Pharmaceutical Services”

MDH/OPASS 20-18592

THIS CONTRACT (the “Contract”) is made this ___ day of _____, 20__ by and between _____ (the “Contractor”) [and Parental Guarantor, if applicable] and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF HEALTH (“MDH” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated _____ (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.4 “IFB” means the Invitation for Bids for Pharmaceutical Services for the Deer’s Head Hospital Center (DHHC), Holly Center, Potomac Center, Regional Institute for Children and Adolescents (RICA)-Baltimore, RICA-Rockville (John L. Gildner), and Western Md. Hospital Center, Solicitation # MDH/OPASS 20-18592, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.5 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.6 “State” means the State of Maryland.
- 1.7 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.8 Capitalized terms not defined herein shall be ascribed the meaning given to them in the IFB.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue for approximately five (5) years until _____ ("Initial Term").
- 3.2 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Bid. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Bid.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by IFB section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and

- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.

7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not

- enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4 Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 8. Confidential or Proprietary Information and Documentation**
- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and

Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract..

- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **IFB Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in IFB Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **IFB Section 3.7**.

10. Indemnification and Notification of Legal Requests

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable

opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law Prevails

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

19. Delays and Extensions of Time

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website:
http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal

auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Department has the right to audit such subcontractor(s).

26. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Bid.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 “Patents, Copyrights, Intellectual Property”** of this Contract;
 - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall be unlimited.
- 29.2 Contractor’s indemnification obligations for Third party claims arising under Section 6 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors are agents of Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State.

Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Department.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the Contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

35. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the

Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. Miscellaneous

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

37. Contract Monitor and Procurement Officer

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

<<contractMonitorName>>

<<contractManagerAddress>>

Phone Number: <<contractManagerPhoneNumber>>

E-Mail: <<contractManagere-mail>>

With a copy to:

Maryland Department of Health (MDH)
201 West Preston Street, 4th Floor
Attention: Dana Dembrow

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: _____

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: _____

Attn: _____

39. Parent Company Guarantee (If applicable)

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

40. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

HIPAA clauses do not apply to this Contract.

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor: <<ContractorName>>	State of Maryland Maryland Department of Health (MDH)
By: <<Contractor Signer>>	By: <<agencyContractSigner>>, <<agencyContractSignerTitle>>
Date:	Date:
Witness/Attest:	Witness/Attest:
PARENT COMPANY (GUARANTOR) (if applicable)	
By:	
Date:	
Witness/Attest:	

Approved for form and legal sufficiency this ____ day of _____, 20__. _____ Assistant Attorney General

[[If this solicitation requires BPW approval keep the text below, otherwise delete it.]]	
APPROVED BY BPW: _____	_____
(Date)	(BPW Item #)

Attachment N. Contract Affidavit

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

Attachment O. DHS Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

Appendix 1. – Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- A. Actual Acquisition Cost (AAC) – The actual amount paid by the Contractor to a pharmaceutical manufacturer or wholesaler to purchase patented/brand or generic prescription (“legend”) drugs, or non-prescription (“over-the-counter” or “non-legend”) drugs, or medical supplies (e.g., diabetic monitors, test strips, or asthma devices), without consideration of any subsequent rebate received by the Contractor for such purchases. Such drugs or supplies are provided by the Contractor to the Center under this Contract for direct/ultimate use by people residing at the Facility.
- B. Administrative Costs, Overhead and Profit – The amount a Contractor will charge to provide the services covered under the Scope of Work, including but not limited to, dispensing of drugs, materials other than the cost of drugs, personnel, delivery, trainings, overhead, insurances, licenses and reports.
- C. Administration Errors – Each incident in which a client receives an incorrect drug, drug dose, dosage form, quantity, route, or concentrations. A failure to administer a dose or administering a dose at an incorrect time is an error.
- D. Apparent Successful Bidder – An entity recommended for Contract award in response to this IFB.
- E. Assigned Pharmacist – A specific pharmacist licensed by the Maryland Board of Pharmacy who will primarily be responsible for filling or overseeing the filling of prescriptions for patients/residents/clients of the Facility. This individual pharmacist shall become thoroughly familiar with the medical and pharmaceutical circumstances of each resident of the Facility so as to make informed decisions or recommendations regarding medications prescribed for Facility patients/residents/clients.
- F. Back-up Pharmacist(s) – One or more pharmacists licensed by the Maryland Board of Pharmacy who will fill or oversee the filling of prescriptions for patients/residents/clients of the Facility in the absence of the Assigned Pharmacist. Each Back-up Pharmacist shall become thoroughly familiar with the medical and pharmaceutical circumstances of each patient/resident/client of the Facility so as to make informed decisions or recommendations regarding medications prescribed for the Facility patients/residents/clients.
- G. Bid – The Bidder’s Bid.
- H. Bidder – An entity that submits a Bid(s) in response to this IFB.
- I. Bid Price Form or Bid Form - The Attachment B Bid Form.
- J. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- K. Client/Patient/Resident – Anyone receiving services or care under this solicitation.
- L. CMS – Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health and Human Services.
- M. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- N. Contract – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment M**.

- O. Contract Officer (CO) – The Office of Procurement and support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer. The Contract Officer for this IFB is identified in the Key Information Sheet.
- P. Contract Monitor or Facility Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- Q. Contractor – The selected Bidder that is awarded a Contract by the State.
- R. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this IFB.
- S. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- T. Maryland Department of Health or (MDH or the “Department”).
- U. eMMA – eMaryland Marketplace Advantage (see IFB **Section 4.2**).
- V. Invitation for Bids (IFB) – This Invitation for Bids issued by the Maryland Department of Health (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- W. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See IFB **Sections 3.10**.
- X. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- Y. Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- Z. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- AA. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- BB. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.

- CC. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- DD. Prescribing Errors – An incorrect selection of drug, drug dose, dosage form, quantity, route, concentration rate of administration, or instructions for use of a drug product ordered or authorized by physician or other legitimate prescriber. Errors may occur due to improper evaluation of indications, contraindications, known allergies, existing drug therapy and other factors. Illegible prescriptions or medication orders that lead to client level errors are also defined as error of prescribing.
- EE. Prescription – A prescription is an order signed by a physician for medication necessary for the treatment of an illness or disorder.
- FF. Procurement Coordinator – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein.
- GG. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**) and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- HH. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- II. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- JJ. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- KK. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- LL. State – The State of Maryland.
- MM. Total Bid Price - The Bidder’s bid price or evaluated bid price for goods and services in response to this solicitation, included in **Attachment B** – Bid Form.
- NN. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

Appendix 2. – BIDDER INFORMATION SHEET & BID FORM

Appendix 2. Bidder Information Sheet and Bid Form

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf.

Appendix 3.1 – Facility Specific Information – Deer’s Head Hospital Center (DHHC)

DEER’S HEAD HOSPITAL CENTER (DHHC)

Location: 351 Deer’s Head Road, Salisbury, Maryland 21802

Licensure:

OHCQ License Number 22-001: Special Hospital – Rehabilitation (66 beds)
OHCQ License Number 22-004: Comprehensive Care Facility (80 beds)
Maryland Commission on Kidney Disease Certification #24: End Stage Renal Dialysis
(unlimited number)

Programs & Services: The Deer’s Head Hospital Center (DHHC) is one of two licensed and accredited regional facilities administered by the Maryland Department of Health consisting of an inpatient chronic disease/acute care hospital, a nursing home unit, an outpatient renal dialysis unit and an outpatient physical/occupational therapy unit. DHHC serves an inpatient population who require in-hospital treatment and offers rehabilitation programs for an array of chronic illnesses. DHHC also provides services for the region’s Renal Dialysis program serving an average of sixty-two (62) patients.

Budgeted Capacity: For Fiscal Year 2020 (July 1, 2019 – June 30, 2020), the budgeted capacity is forty-two (42) beds:

Long Term Care Hospital: 6
Comprehensive Care Program: 36
Kidney Dialysis Unit: 58

Accreditations & Certifications:

The Joint Commission – Accreditation for Hospital, Nursing Care Center and Laboratory
CMS Clinical Laboratory Improvement Amendments (CLIA) – Laboratory – Certificate of Accreditation

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use: Optimus (Yardi) EMR

Current Process for Transmitting Physicians’ Orders: Electronic via EMR and faxing as back-up

Procurement Coordinator:

Melane Boltz, Agency Procurement Specialist Supervisor
Phone: 410-543-4084
Email: Melane.boltz@maryland.gov

Facility Contract Monitor:

Cheri Porcelli, RN, MSN, Chief Nursing Officer

Phone: 410-543-4014

Email: cheri.porcelli@maryland.gov

Appendix 3.2 – Facility Specific Information – Holly Center (HC)

HOLLY CENTER (HC)

Location: Holly Center is located at 926 Snow Hill Road, Salisbury, MD 21804 in Wicomico County.

Licensure: The facility is licensed and certified as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICFID) and provides 24/7 habilitation services. The facility is licensed for 150 individuals with intellectual disabilities. These individuals also have comorbid medical/psychiatric disorders as well as associated behavioral challenges.

Programs & Services: Holly Center provides day programs, recreation, dental and ancillary therapy services that include Speech, Physical Therapy, Occupational therapy, Psychology and Social Services.

Budgeted Capacity: The facility's budgeted bed capacity for FY2020 (July 1, 2019 – June 30, 2020) is 50 individuals.

Accreditation & Certifications:

State of Maryland and Federal Licensure/Certification for Intermediate Care Facility for Individuals with Intellectual Disability (ICF/ID).

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use: No, pending approval of the State of Maryland, Department of Health centralized HER.

Current Process for Transmitting Physicians' Orders: Orders are currently being sent via facsimile to the Pharmacy vendor's fax machine. See attached Physician Order form (See Appendix 4).

Procurement Coordinator:

Tammie Wells, Director of Purchasing

Phone: 410-572-6214

Tammie.wells@maryland.gov

Facility Contract Monitor:

Program Services Director or Team Designee (contact information to be provided upon contract award)

Appendix 3.3 – Facility Specific Information – Potomac Center (PC)

POTOMAC CENTER (PC)

Location: Potomac Center is located at 1380 Marshall Street, Hagerstown, MD 21740

Licensure: This facility is licensed and certified as an Intermediate Care Facility for individuals with Intellectual Disabilities (ICF-MR). These individuals will also have a dual diagnosis of a medical/psychiatric disorder as well as associated behavioral challenges. This facility is licensed for 63 individuals.

Programs & Services: The Potomac Center provides onsite services to include medical and nursing care, recreational care, vocational services, behavioral supports, speech therapy, physical therapy, and occupational therapy.

Budgeted Capacity: The facility's budgeted capacity for FY2020 (July 1, 2019 – June 30, 2020) is 56 individuals.

Accreditations & Certifications:

MDH Office of Health Care Quality
Centers for Medicare & Medicaid Services (CMS)

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use: No, pending approval of the State of Maryland, Department of Health centralized EHR.

Current Process for Transmitting Physicians' Orders: Facsimile, see attached Physician Order form.

Procurement Coordinator:

Robert Brown, CFO
Phone: 240-313-3579
Email: robertm.brown@maryland.gov

Facility Contract Monitor:

DeLaura White, Director of Nursing
Phone: 240-313-3523
Email: delaura.white@maryland.gov

Appendix 3.4 – Facility Specific Information – Regional Institute for Children & Adolescents (RICA) - Baltimore

REGIONAL INSTITUTE FOR CHILDREN & ADOLESCENTS (RICA) – BALTIMORE

Location: RICA Baltimore is located at 605 S. Chapel Gate Lane, Baltimore, Maryland 21229

Licensure: The facility is licensed as a Residential Treatment Center for forty-five (45) beds.

Programs & Services: The facility provides the following programs: Residential Treatment, Special Education School, and Day Treatment. The following services are provided by the facility: Psychiatric Treatment, Clinical Psychology services, Social Workers, Nursing/Residential, Family Practice Services, and Recreational Therapy.

Budgeted Capacity: The facility’s budgeted capacity for FY2020 (July 1, 2019 – June 30, 2020) is forty-five (45) beds: fifteen (15) female adolescents and thirty (30) male adolescents.

Accreditations & Certifications:

The Joint Commission – Behavioral Health Care

CMS Clinical Laboratory Improvement Amendments (CLIA) – Laboratory - Certificate of Waiver

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use: No, pending approval of the State of Maryland, Department of Health centralized EHR.

Current Process for Transmitting Physicians’ Orders: Facsimile, see attached Physician Order form.

Procurement Coordinator:

Wendy Bazemore

Phone: 410-368-7826

Email: Wendy.bazemore@maryland.gov

Facility Contract Monitor:

Tonia Tuggle, M.D., Medical Director

Phone: 410-368-7803

Email: tonyad.tuggle@maryland.gov

Appendix 3.5 – Facility Specific Information – Regional Institute for Children & Adolescents (RICA) – Rockville (John L. Gildner)

REGIONAL INSTITUTE FOR CHILDREN & ADOLESCENTS (RICA) – ROCKVILLE

Location: John L. Gilder Regional Institute for Children and Adolescents is located in Montgomery County at 15000 Broschart Road, Rockville.

Licensure: The facility is licensed as a Residential Treatment Center for eighty (80) beds.

Programs & Services: Day and residential services are provided to children and adolescents with Severe Emotional Disabilities.

Budgeted Capacity: The facility's budgeted capacity for FY2020 (July 1, 2019 – June 30, 2020) is forty-eight (48) beds and 70 -75 day students.

Accreditations & Certifications:

The Joint Commission – Behavioral Health Care

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use: No, pending approval of the State of Maryland, Department of Health centralized EHR.

Current Process for Transmitting Physicians' Orders: Facsimile, see attached Physician Order form.

Procurement Coordinator:

Kenneth Basler, CEO

Phone: 240-422-3264

Email: Kenneth.basler@maryland.gov

Facility Contract Monitor:

Dr. Melissa Arking

Phone: 301-251-6991

Email: Melissa.arking@maryland.gov

Appendix 3.6 – Facility Specific Information – Western Maryland Hospital Center (WMHC)

WESTERN MARYLAND HOSPITAL CENTER (WMHC)

Location: Western Maryland Hospital Center is located at 1500 Pennsylvania Avenue, Hagerstown, MD 21742 in Washington County.

Licensure: The facility is licensed as a Special Hospital – Chronic Disease (60 beds) and a Comprehensive Care Facility (63 beds).

Programs & Services: The facility provides specialty medical services as well as long term care and treatment for patients/residents with complex medical needs. The facility offers three programs: High Intensity Medical Program (medical, pulmonary, wound management, inpatient renal dialysis, and rehabilitation), Brain Injury Program (rehabilitation for individuals with traumatic brain injury and individuals participating in the MD Brain Injury Waiver Program), and Comprehensive Care Program (skilled nursing care for medically complex residents who no longer require hospital level of care).

The facility provides onsite services to include medical, psychology, occupational therapy, speech therapy, physical therapy, recreational therapy, respiratory therapy, and social services. The facility operates an onsite medical laboratory.

Budgeted Capacity: The facility's budgeted bed capacity for FY2020 (July 1, 2019 – June 30, 2021) is 55 beds as follows:

- High Intensity Medical Program = 12 beds
- Brain Injury Program = 7 beds
- Comprehensive Care Program = 36 beds

Accreditations & Certifications:

The Joint Commission – Accreditation for Hospital, Nursing Care Center and Laboratory
CMS Clinical Laboratory Improvement Amendments (CLIA) – Laboratory - Certificate of Accreditation

Commission on Accreditation of Rehabilitation Facilities (CARF) – Brain Injury Program

Electronic Medical Record (EMR) or Electronic Health Record (EHR) in use:

Yes, OPTIMUS EMR

Current Process for Transmitting Physicians' Orders: Transmitted through the EMR.

Procurement Coordinator:

Cynthia Shaffer

Phone: 301-745-4373

Cynthia.shaffer@maryland.gov

Facility Contract Monitor:

Jean Thomas, Chief Nursing Officer

Phone: 301-745-4725

Email: Jean.thomas@maryland.gov

